APPENDIX A - JUDGMENT OF THE SUPREME COURT OF TEXAS DENYING PETITION FOR REVIEW, FILED SEPTEMBER 17, 1998

THE SUPREME COURT OF TEXAS

Orders Pronounced September 17, 1998

ORDERS ON CAUSES

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ORDERS ON PETITIONS FOR REVIEW

THE FOLLOWING PETITIONS FOR REVIEW ARE DENIED:

* * *

98-0684 WYNNE L. CREEKMORE, JR. v. VASA NORTH ATLANTIC INS. CO.; from Harris County; 1st district (01-96-01294-CV, RULE 47.7, 04-09-98)

APPENDIX B - JUDGMENT OF THE SUPREME COURT OF TEXAS OVERRULING MOTION FOR REHEARING, FILED DECEMBER 17, 1998

THE SUPREME COURT OF TEXAS

Orders Pronounced December 17, 1998

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ORDERS ON MOTIONS

THE FOLLOWING MOTIONS FOR REHEARING OF PETITIONS FOR REVIEW ARE OVERRULED:

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98-0684 WYNNE L. CREEKMORE, JR. v. VASA NORTH ATLANTIC INS. CO.; from Harris County; 1st district (01-96-01294-CV, RULE 47.7, 04-09-98)

APPENDIX C - OPINION OF THE COURT OF APPEALS, FIRST DISTRICT, ISSUED APRIL 9, 1998

issued April 9, 1998

THE STATE OF TEXAS
In The
COURT OF APPEALS
For The
FIRST DISTRICT OF TEXAS

NO. 01-96-01294-CV

WYNNE L. CREEKMORE, JR., Appellant

V.

VASA NORTH ATLANTIC INSURANCE COMPANY, Appellee

On Appeal from the County Civil Court at Law No. 1
Harris County, Texas
Trial Court Cause No. 645,079

OPINION

Appellee VASA North Atlantic Insurance Company sued appellant Wynne L. Creekmore, Jr. for breach of contract arising out of Creekmore's failure to reimburse VASA $9,823.08 on two $5,000 deductibles on his professional liability insurance policies. Creekmore counterclaimed.

(3) the applicant was denied credit notwithstanding his qualifications. See generally Moore v. United States Dep't of Agric. ex rel. Farmers Home Admin., 55 F.3d 991,993 (5th Cir. 1995). VASA, however, never denied credit to Creekmore. Creekmore judicially admits in his first amended counterclaim that he did not accept VASA's offer of credit, not vice-versa. Accordingly, the trial court did nor err in dismissing Creekmore's Equal Credit Opportunity Act claim.

We overrule point of error one.

In point of error two, Creekmore contends the trial erred in rendering summary judgment regarding his tortious interference-with-contract claim because the statute of limitations has not run. The essence of Creekmore's tort claim is that VASA exercised an improper amount of control over the choice of attorneys hired to represent Creekmore under the professional liability insurance policies.

VASA contends Creekmore's tortious-interference-with-contract claim is barred by the two-year statute of limitations for personal injury claims. See Act of May 17, 1985, 69th Leg., R.S., ch. 959, sec. 1, § 16.003, 1985 Tex. Gen. Laws 3242, 3252 (Tex. Civ. Prac. & Rem. Code Ann. §16.003, since amended). Because VASA issued the first policy on May 16, 1991 and the second policy on May 16, 1992, it argues Creekmore had until May 16, 1993 and May 16, 1994 to file these claims. Creekmore filed the claims on November 1, 1995.

On summary judgment, it is VASA's burden to establish as a matter of law when Creekmore's tortious-interference-with-contract claim accrued for the purpose of applying the statute of limitations. Foreman v. Pettit Unlimited, Inc., 886 S.W.2d 409, 411 (Tex. App-Houston [1st Dist.] 1994, no

writ). VASA's attempt to discharge this burden by claiming the cause of action accrued when the policies were issued must fail. A cause of action accrues when a wrongful act occurs resulting in some injury to the plaintiff. Murray v. San Jacinto Agency, Inc., 800 S.W.2d 826, 828 (Tex. 1990). VASA has not proved, as a matter of law, when the alleged wrongful act occurred.[2] We conclude that VASA has not proved the statute of limitations has run, so the trial court erred in dismissing Creekmore's tortious-interference-with-contract claim.

We sustain point of error two.

In point of error three, Creekmore contends the trial erred in rendering summary judgment because part of VASA's summary judgment evidence allegedly consisted of a duplicate affidavit. Creekmore argues for the first time on appeal that VASA had a duty under Texas Rule of Civil Evidence 1003 to identify the document as a duplicate. This point is waived because Creekmore did not object in the trial court and obtain an adverse ruling. See TEX. R. APP. P.33.1.

We overrule point of error three.

We reverse the trial court's judgment in part regarding

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[2] Creekmore specifically points to a February 14, 1994 telephone message left by VASA's attorney as an example of a wrongful act. The message, as recorded by Creekmore's receptionist, was, "if you want to start acting like [an] adult + professional - it will be appreciated [.] If you want to act like [a] 13 yr. Old - let him know." VASA dismisses the telephone call as a mere continuation of the pre-existing cause of action.

Creekmore's tortious-interference-with-contract claim, affirm the remainder of the judgment, and remand the case for further proceedings limited to Creekmore's tortious-interference-with-contract claim.

s/ Frank G. Evans[3]
Justice

Panel consists of Justices Mirabal, Taft, and Evans. Do not publish. Tex. R. APP. P. 47.

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[3] The Honorable Frank G. Evans, retired Chief Justice, Court of Appeals, First District of Texas at Houston, sitting by assignment.

APPENDIX D - JUDGEMENT OF THE COURT OF APPEALS, FIRST DISTRICT, ISSUED APRIL 9, 1998

THE STATE OF TEXAS
In The
COURT OF APPEALS
For The
FIRST DISTRICT OF TEXAS

JUDGMENT

Appeal from the County Civil Court
at Law No. 1 of
Harris County, Texas
(Tr. Ct. No. 645,079)

Panel consists of Justices Mirabal,
Taft and Evans
Opinion delivered by Justice Evans)

Case No. 01-96-01294-CV

WYNNE L. CREEKMORE, JR.,
APPELLANT

V.

VASA NORTH ATLANTIC INSURANCE
COMPANY, APPELLEE

The cause heard today by the Court is an appeal from the judgment signed by the court below on July 2, 1996. After submitting the cause and inspecting the record of the court below, it is the opinion of this Court that there was reversible

error in the portion of the judgment related to the tortious-interference-with-contract claim. It is therefore **CONSIDERED**, **ADJUDGED**, and **ORDERED** that portion of the judgment of the court below be **reversed**.

It is the further opinion of this Court that there was no reversible error in the remaining portion of the judgment. It is therefore **CONSIDERED**, **ADJUDGED**, and **ORDERED** that the Judgment of the court below, except as hereinabove reversed be **affirmed**.

It is further **CONSIDERED**, **ADJUDGED**, and **ORDERED** that the cause be remanded to the court below for further proceedings limited to the tortious-interference-with-contract claim.

It is further **ORDERED** that the appellant, WYNNE L. CREEKMORE, JR., pay one-half of all costs incurred by reason of this appeal. It is further **ORDERED** that the appellant's surety, UNIVERSAL SURETY OF AMERICA, is jointly and severally liable for the payment of appellant's share of the costs incurred by reason of this appeal to the extent of the surety's liability on its bond.

It is further **ORDERED** that the appellee, VASA NORTH ATLANTIC INSURANCE COMPANY, pay one-half of all costs incurred by reason of this appeal.

It is further **ORDERED** that this decision be certified below for observance.

Judgment rendered by panel consisting of Justices Mirabal, Taft, and Evans.
Judgment rendered April 9, 1998

APPENDIX E - TRIAL COURT ORDER DENYING MOTION FOR NEW TRIAL, ISSUED SEPTEMBER 4, 1998

NO. 645,079

IN THE COUNTY CIVIL COURT
AT LAW NUMBER ONE (1) OF HARRIS COUNTY, TEXAS

VASA NORTH ATLANTIC INSURANCE COMPANY

V.

WYNNE L. CREEKMORE, JR. D/B/A WYNNE L. CREEKMORE, JR.
ATTORNEY AT LAW

ORDER

It is ORDERED, ADJUDGED and DECREED that the Motion for New Trial of Defendant/Counter-Plaintiff Wynne L. Creekmore, Jr. d/b/a Wynne L. Creekmore, Jr., Attorney at Law is DENIED.

SIGNED this 4th day of September, 1996.

s/ The Honorable Eugene Chambers
Judge Presiding

APPROVED AS TO
FORM AND SUBSTANCE:

McFall, Sherwood & Sheehy, P.C.
s/ Donald B. McFall
State Bar No. 13595000